

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL**

**FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER:

0 2 — 0 1 4

2. STATE:

**Pennsylvania**

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL  
SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR  
HEALTH CARE FINANCING ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

**February 1, 2002**

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN

☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN

☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

**42 CFR 433.36(c) 1902(a)(18) and 1917(a) and (b)**

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

**53, 53a, 53b, 53c, 53d, 53e Attachment 4.17a 1 & 2**

7. FEDERAL BUDGET IMPACT:

a. FFY 02 \$ 299,051

b. FFY 03 \$ 563,315

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION  
OR ATTACHMENT (If Applicable):

**53, 53a, 53b, 53c, 53d, 53e Attachment 4.17a  
1 & 2**

10. SUBJECT OF AMENDMENT:

**Updates to the Medical Assistance Estate Recovery Program regulations**

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

☒ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

**Feather O. Houstoun**

14. TITLE:

**Secretary of Public Welfare**

15. DATE SUBMITTED:

16. RETURN TO:

**Commonwealth of Pennsylvania**

**Department of Public Welfare**

**P.O. Box 2675**

**Harrisburg, Pennsylvania 17105**

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

18. DATE APPROVED: **SEP 10 2003**

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL:

**2/1/02**

20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME:

**MARK T. MCSORLEY**

22. TITLE: **ASSOCIATE REGIONAL ADMINISTRATOR  
DIVISION OF MEDICAID & CHILDREN'S HEALTH**

23. REMARKS:

Revision: HCFA-PM-95-3 (MB)  
MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: \_\_\_\_\_

Citation

42 CFR 433.36(c)  
1902(a)(18) and  
1917(a) and (b) of  
the Act

4.17 Liens and Adjustments or Recoveries

(a) Liens

— The State imposes liens against an individual's real property on account of medical assistance paid or to be paid.

The State complies with the requirements of section 1917(a) of the Act and regulations at 42 CFR 433.36(c)-(g) with respect to any lien imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf.

— The State imposes liens on real property on account of benefits incorrectly paid.

— The State imposes TEFRA liens 1917(a)(1)(B) on real property of an individual who is an inpatient of a nursing facility, ICF/MR, or other medical institution, where the individual is required to contribute toward the cost of institutional care all but a minimal amount of income required for personal needs.

The procedures by the State for determining that an institutionalized individual cannot reasonably be expected to be discharged are specified in Attachment 4.17-A. (NOTE: If the State indicates in its State plan that it is imposing TEFRA liens, then the State is required to determine whether an institutionalized individual is permanently institutionalized and afford these individuals notice, hearing procedures, and due process requirements.)

— The State imposes liens on both real and personal property of an individual after the individual's death.

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53a

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MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.  
  
— Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.
- (2) — The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a)(1)(B) (even if it does not impose those liens).
- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

Premium payments and cost-sharing for decedents who were qualified Medicare beneficiaries shall be included in the statement of claim for the period of time the decedent received nursing facility services, home and community based services or related hospital and prescription drug services rendered on or after August 15, 1994. With respect to a claim for the costs of MA services delivered through a Managed Care Organization (MCO) contract, the Department's claim will be based on the amount the Department paid to the MCO on behalf of the decedent.

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HCFA REGION III

215 361 4280 P.05

53b

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MAY 1995

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

- (4)        The State disregards assets or resources for individuals who receive or are entitled to receive benefits under a long term care insurance policy as provided for in Attachment 2.6-A, Supplement 8b.
- X   The State adjusts or recovers from the individual's estate on account of all medical assistance paid for nursing facility and other long term care services provided on behalf of the individual. (States other than California, Connecticut, Indiana, Iowa, and New York which provide long term care insurance policy-based asset or resource disregard must select this entry. These five States may either check this entry or one of the following entries.)
- The State does not adjust or recover from the individual's estate on account of any medical assistance paid for nursing facility or other long term care services provided on behalf of the individual.
- The State adjusts or recovers from the assets or resources on account of medical assistance paid for nursing facility or other long term care services provided on behalf of the individual to the extent described below:

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(MB)

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania(c) Adjustments or Recoveries: Limitations

The State complies with the requirements of section 1917(b)(2) of the Act and regulations at 42 CFR §433.36(h)-(i).

- (1) Adjustment or recovery of medical assistance correctly paid will be made only after the death of the individual's surviving spouse, and only when the individual has no surviving child who is either under age 21, blind, or disabled.
- (2) With respect to liens on the home of any individual who the State determines is permanently institutionalized and who must as a condition of receiving services in the institution apply their income to the cost of care, the State will not seek adjustment or recovery of medical assistance correctly paid on behalf of the individual until such time as none of the following individuals are residing in the individual's home:
  - (a) a sibling of the individual (who was residing in the individual's home for at least one year immediately before the date that the individual was institutionalized), or
  - (b) a child of the individual (who was residing in the individual's home for at least two years immediately before the date that the individual was institutionalized) who establishes to the satisfaction of the State that the care the child provided permitted the individual to reside at home rather than become institutionalized.
- (3) No money payments under another program are reduced as a means of adjusting or recovering Medicaid claims incorrectly paid.

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## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

- (4) Describes the standards and procedures for waiving estate recovery when it would cause undue hardship.
- (5) Defines when adjustment or recovery is not cost-effective. Defines cost-effective and includes methodology or thresholds used to determine cost-effectiveness.
- (6) Describes collection procedures. Includes advance notice requirements, specifies the method for applying for a waiver, hearing and appeals procedures, and the time frames involved.

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MAY 1995Attachment 4.17-A  
Page 1

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: \_\_\_\_\_

## LIENS AND ADJUSTMENTS OR RECOVERIES

- 
1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

N/A

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

N/A

3. The State defines the terms below as follows:

- o **estate** All real and personal property and other assets included within the individual's estate as provided in PA law. (20 Pa. C.S.A. sections 101. et seq, 72 PA C.S. Section 7301(r), 61 PA Code Section 101.1)
- o **individual's home-** principal place of residence

- o **equity interest in the home**

N/A

- o **residing in the home for at least one or two years on a continuous basis,**  
and

N/A

- o **lawfully residing.**

N/A

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MAY 1995

Attachment 4.17-A  
page 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

4. The State defines undue hardship as follows:

(see attached)

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective: The Department has exclusive authority to waive its claim, compromise its claim, or postpone collection, in other circumstances when undue hardship exists, or when collection is not cost-effective, as determined by the Department on an individual case-by-case basis.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness): The Department does not seek to collect from estates with a gross value of \$2,400.00 or less, unless there is no heir. For estates with a gross value of \$2,400.00 or more, cost-effectiveness is determined based on the factual circumstances of each case.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved): A personal representative, transferee or family member adversely affected by a decision of the Department may appeal within 30 days of the date the affected person is notified of the decision. Waiver requests shall be submitted to the following address: Estate Recovery Program, Post Office Box 8486, Harrisburg, Pennsylvania 17105-8486. The Department will submit a statement of claim to the personal representative within the response period of 45-calendar days. If the Department fails to submit a statement of claim to the personal representative within the response period, the Department's claim is forfeited.

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Attachment 4.17a Pg 2A

## 4. As set forth in 258.10

(a) The Department will waive its claim in cases of undue hardship.

(b) The Department will find undue hardship and will permanently waive its claim with respect to the primary residence of a decedent if the person requesting the undue hardship waiver meets all of the following conditions:

(1) The person has continuously resided in the primary residence of the decedent for at least 2 years immediately preceding the decedent's receipt of nursing facility services, or, for at least 2 years during the period of time which Medicaid-funded home and community based services were received.

(2) The person has no other alternative permanent residence.

(3) The person has provided care or support to the decedent for at least 2 years during the period of time that Medicaid-funded home and community based services were received by the decedent, or for at least 2 years prior to the decedent's receipt of nursing home services during which time the decedent needed care or support to remain at home.

(c) The Department will find undue hardship and will permanently waive its claim with respect to an income-producing asset if a spouse, child, parent, sibling or grandchild of the decedent meets both of the following:

(1) The asset is used to generate the primary source of income for the household.

(2) There would be a gross family income of less than 250% of the Federal poverty guideline without use of the asset.

(d) An income producing asset is property which is used in a trade or business such as a family farm, family business or rental property, excluding cash, stocks and bonds, mutual fund shares or other marketable financial instruments.

~~(e) The Department will find undue hardship and will permanently waive from~~  
the amount of the Department's recovery, an amount equal to the necessary and reasonable expenses for maintaining the decedent's home while the decedent was receiving home and community based services or maintaining the decedent's vacant home while the decedent was in a nursing facility. Necessary and reasonable expenses for maintaining the home include real estate taxes, utility bills, home repairs and home maintenance such as lawn care and snow removal necessary to keep the property in condition for the decedent to return home or to sell at fair market value. Creditors are not eligible to request a waiver under this subsection.

(f) The Department will find undue hardship and will permanently waive its claim for administered estates with a gross value of \$2,400 or less, if there is an heir.

<sup>over age 21</sup>  
(g) A ~~spouse or parent~~, child or sibling of the decedent who receives a postponement of collection in accordance with section 258.7 (relating to postponement of collection) is not precluded from receiving an undue hardship waiver if the criteria in subsection (b), (c), (e) or (f) are met.